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IN THE

Supreme Court of the United States

October Term, 1972

No.....

MAX KOSHER,
Petitioner,

v.

WASHINGTON STATE BAR ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

The petitioner, Max Kosher, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Washington entered in the above-entitled case on January 11, 1972, and as to which rehearing was denied on April 4, 1972.

OPINIONS BELOW

The final Order of the Court below is not reported and was accompanied by an unreported memorandum. Such Order and accompanying memorandum are appended hereto, Appendix A, pages A-1 through A-8.

The previous decision of the Court below is reported at 61 Wn.2d 206, 377 P.2d 988 (1963), and is appended hereto, Appendix B, pages A-9 through A-13.

JURISDICTION

The judgment of the Supreme Court of Washington was entered on January 11, 1972. A timely petition for rehearing, was denied on April 4, 1972. The judgment is final and from the highest Court of the state. The jurisdiction of this Court is invoked under 28 U.S.C., ¶1257(3).

QUESTIONS PRESENTED

1. Does disbarment of an absentee lawyer charged with criminal misconduct deny to him due process of law in contravention of the Fourteenth Amendment of the Constitution where hearing tribunal refuses to allow participation by an attorney attempting to represent such lawyer.

2. Does disbarment of absentee lawyer, charged with criminal misconduct, deny to him due process of law in contravention of Fourteenth Amendment to Constitution where hearing tribunal fails to appoint an attorney to represent such lawyer although clearly authorized to so do.

3. Does disbarment of absentee lawyer deny to him due process of law in contravention of Fourteenth Amendment to Constitution where the charges constitute criminal misconduct, not established by conviction, and all process and notices are served by substitute service and mailing without proof that such lawyer had actual notice of the proceedings at any time prior to his disbarment?

4. In a disbarment proceedings, with the accused lawyer absent and accused of criminal misconduct, is the cumulative effect of

(a) refusal to allow participation of counsel

(b) failure to appoint counsel

(c) complete absence of either cross-examination or critical examination of hostile witnesses who admitted their own criminal conduct

(d) repeated failure to give proper notice

(e) absence of personal service

constitute a denial of due process in contravention of Fourteenth Amendment?

5. Is due process denied by finding discretionary reinstatement procedures as only remedy where disbarment is directly attacked on constitutional grounds?

6. Has the practice of law now become so necessarily and universally involved in Federal matters that there should be promulgated guidelines assuring due process of law in all disbarment proceedings?

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, No. 1, §1. Citizenship rights not to be abridged by states:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Rules of Court involved are too lengthy to set forth verbatim; accordingly, they are appended, Appendex C as follows:

Rules for Discipline of Attorneys, adopted Novem-

ber 2, 1961, promulgated by Supreme Court of State of Washington and effective January 2, 1961 are set forth in Volume 57 Washington Reports, 2d Series, from pages xivi through lxvii inclusive. (Appendix C pages A-14 through A-41)

Discipline Rules for Attorneys (DRA) Rules 8.1 through 8.7. Promulgated by Supreme Court of State of Washington adopted and effective July 1, 1969, as amended providing for procedures in reinstatement, and set out in Appendix D, pages A-42 through A-44.

STATEMENT OF THE CASE

Petitioner, Max Kosher, was admitted to the Washington State Bar in 1947 and practiced law in Washington until late 1960 when he ceased active practice and departed from the State.

On July 31, 1961, the Washington State Bar Association initiated disciplinary proceedings, aimed at disbarment, against petitioner by substitute service and mailing of process. (Tr. 1, 2-4, 26, 27)

Petitioner was charged with five items of misconduct revolving around allegations that he: (1) solicited legal and bail bond business from jail prisoners, (2) paid jail employees to solicit legal business for him, (3) aided and abetted prostitution, (4) wilfully disobeyed a subpoena to appear as a witness in a pending criminal trial, and (5) misappropriated $300.00 delivered to him by a client for bail purposes. (Tr. 2-4)

All charges, except possibly solicitation of bond business, constituted crimes under Washington statutes. He had not been convicted on any criminal charge.

On August 31, 1961, attorney Bill Lanning, appearing on behalf of petitioner, at the request of his family, filed

appropriate multiple responsive pleadings. (Tr. 9-14, 15-16)

Hearing was set for November 29, 1961, and notice thereof was mailed to Mr. Kosher's office address on November 8 and served on attorney Lanning on November 10. (Tr. 34, 35, 36)

The hearing was commenced on the morning of November 29, 1961. Mr. Lanning appeared and argued a motion for list of witnesses and for continuance to allow time to interview the witnesses and to attempt to locate Kosher (Tr. 9-14) with whom he said he had no direct contact.

Lanning's motions were heard and denied. The panel then held that Lanning lacked authority to represent Kosher and he was denied the right to participate as counsel. (St. 17) This was the first challenge to his position. He retired from the hearing and the hearing was immediately thereupon held. Kosher was not present at any stage of the proceedings and no attorney was present on his behalf.

Following the conclusion of the hearing, findings, conclusions and recommendations of the Bar Association tribunal (Tr. 17-24) and the transcripts were circulated among Board of Governors of the state Bar Association who adopted the recommendations of the Panel recommending disbarment. (Tr. 46-59)

The entire record was then mailed to the Supreme Court of the State of Washington for further proceedings to determine action to be taken.

The Bar Association filed its brief (Tr. 61-122) and the matter was eventually set for hearing before the state Supreme Court on September 28, 1962, and was heard on

that date, counsel for the Bar Association presenting its case by argument and review only and neither Kosher nor anyone on his behalf appearing or in any way participating. No further testimony or other evidence was taken, the state Supreme Court relying exclusively upon the transcript of the Bar Association hearing (St. 1-291), such tribunal being the sole designated body for evidence taking.

The Supreme Court rendered its written decision on January 10, 1963, and stated in conclusion:

> ". . . . it is hereby ordered that Max Kosher is disbarred from the practice of law in the State of Washington and that his name shall be stricken from the roll of attorneys."

This decision was reported in 61 Wn.2d 206, 37 P.2d 988 (1963), and is set forth in the Appendix hereto. (Appendix B, page A-9 through A-13)

On March 31, 1971, petitioner duly served (Tr. 219) and filed (Tr. 218) with the state Supreme Court, Summons and Complaint in Equity to Vacate Judgment of Disbarment (Tr. 181, 182-217) upon the basis that same was void for want of due process. The state Bar Association then filed its Answer (Tr. 248-250) and Motion to Quash. (Tr. 223-224) A hearing was held before the state Supreme Court and subsequent thereto and on January 11, 1972, the Court entered its Order Dismissing Petitioners Complaint in Equity (Appendix A, page A-1 through A-8) Timely petition for rehearing was filed and was denied by order of April 4, 1972. (Tr. 384)

FEDERAL QUESTIONS RAISED BELOW

Petitioner raised by his aforesaid Complaint in Equity in the state Supreme Court, by his Brief of Appellant in the

state Supreme Court, by his argument before the state Supreme Court and by his Petition for Rehearing before the state Supreme Court, the following matters:

1. That the refusal to allow attorney Lanning to appear was a denial of constitutionally protected due process.
2. That the failure to follow the prescribed rules of procedure was a denial of constitutionally protected due process.
3. That the prescribed rules of procedure were themselves unconstitutional in that they did not afford due process under the circumstances in their provisions for substitute and mailed process service and notice serving.
4. That the failure to appoint an attorney to represent Mr. Kosher was a denial of constitutionally protected due process.

REASONS FOR GRANTING THE WRIT

1. The Refusal to Allow Attorney Lanning to Participate in the Proceedings Leading Directly to the State Supreme Court's Action in Permanent Disbarment Was a Denial of Due Process Under Amendment XIV of the Constitution of the United States

"*Disbarment*, designed to protect the public, *is a punishment or penalty* imposed on the lawyer." (Emphasis supplied) *In re Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968). *Ex parte Garland*, 4 Wall (U.S.) 333, 18 L.Ed. 366 (1867).

Each charge of the Formal Complaint against petitioner (Tr. 2-4) contained allegations of criminal misconduct:

(1) Soliciting legal business, constituting the crime of "Barratry" under Revised Code of Washington, Sec-

tion 9.12.010, and "Vagrancy" under Section 9.87.010.

(2) Paying jail employees to solicit legal business constituting crimes of "Barratry" and "Vagrancy."

(3) Aiding and abetting prostitution, constituting crimes of "Prostitution" under Revised Code of Washington 9.79.060 and 9.01.030 and "Vagrancy."

(4) Disobeying subpoena to appear as witness constituting crime of "Criminal Contempt" under Revised Code of Washington 9.23.010.

(5) Wrongly taking $300.00 from a client constituting crime of "Grand Larceny" under Revised Code of Washington, 9.54.010 and 9.54.090.

Prostitution and Grand Larceny constitute felonies and the remaining charges are misdemeanors.

Only the charge of doing bail bond business, contained in the first item of the original complaint possibly did not constitute a charge of a crime.

While not an inflexible rule, the Courts have generally exercised special caution and restraint in disbarment proceedings based on alleged commission of crime where there has not been a prior conviction. *Ex Parte Wall*, 107 U.S. 265, 18 L.Ed. 552, 2 S.Ct. 569 (1883), and see Annotation 90, A.L.R. 1111, *et seq*.

Because of the criminal nature of the misconduct charged, the Bar Association tribunal should have taken special precaution to protect the constitutional rights of the accused to due process.

The right to be represented by an attorney is of the

essence of due process. *Powell v. Alabama*, 287 U.S. 45, 77 L.Ed. 158, 53 S.Ct. 55, 84 A.L.R. 527 (1932); *Reynolds v. Cochran*, 365 U.S. 525, 5 L.Ed.2d 754, 81 S.Ct. 723 (1961).

In recognition of the grave importance of this principle, the protection of the right to counsel has been extended beyond the imperatives of the purely criminal case and into the quasi-criminal (juvenile delinquency). *In re Gault*, 387 U.S. 1, 18 L.Ed.2d 527, 87 S.Ct. 1428 (1867), and has even been recognized as a requisite of due process at the administrative hearing level (welfare aid). *Goldberg v. Kelly*, 297 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970).

The Court has recently stated that a disbarment hearing is of "quasi-criminal" nature and that disbarment constitutes "punishment" and has made a direct comparison to *In re Gault, supra; In re Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968), reh. den. 391 U.S. 961, 20 L.Ed.2d 874, 88 S.Ct. 1833.

There is a strong presumption that an attorney has authority to represent his client and the entry of appearance is presumptive, and generally sufficient, evidence of such authority. *Hill v. Mendenhall*, 21 Wall (U.S.) 453, 22 L.Ed. 616 (1875); *Osborn v. Bank of United States*, 9 Wheat (U.S.) 738, 6 L.Ed. 204 (1824).

As a matter of uncontraverted fact, Bill Kosher, petitioner's brother, then held a duly executed general power of attorney from petitioner (Tr. 187-189) at the time he engaged Lanning's services on behalf of petitioner. And although the fact of the power of attorney was unknown to the tribunal, Lanning *was* petitioner's attorney when

excluded. His right to participate was absolute and was a right constitutionally protected.

As stated in *Reynolds v. Cochran*, 365 U.S. 525, 5 L.Ed.2d 754, 81 S.Ct. 723:

> "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by him and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

It is also pertinent to the issue of fairness to note that the Bar Association served all initial process on the family and then completely blocked the family's attempt to secure representation for the accused.

The Bar Association had previously honored Lanning's appearance by accepting and filing his pleadings and giving him notice of date of hearing. (Tr. 25, 29, 34, 37) Challenge of authority of an attorney to appear must be raised promptly. It has been held that the question cannot be raised after filing of demurrer or answer. *Cooper v. Little*, 29 Ten. App. 685, 201 S.W.2d 210 (1946); 7 Am. Jur.2d 118, *Attorneys At Law*, §115. By permitting an attorney to conduct proceedings without challenging his authority promptly, the opposing party waives any want of authority and consents to the appearance of the attorney. *State v. Harris*, 14 N.D. 501, 105 N.W. 621 (1905); *Miranosky v. Parson*, 152 W. Va. 241, 161 S.E.2d 665 (1968). This apparent acceptance of his position could have no other effect than to lull both Lanning and the family into feeling secure in their position and prevent all further effort to obtain counsel and confirm his position. It is also pertinent that the hearing commenced im-

mediately upon Lanning's rejection without the requested continuance or further opportunity to get representation. This was in the face of obvious intent by Kosher's family to have counsel participate and without prior warning of challenge.

The strong presumption in favor of the appearing attorney's authority persists where the attorney was hired by an *agent* of the client, *Western Auto Supply Co. v. Dillard,* 172 S.E.2d 388 (W. Va. 1970); by an *insurer* of the client, *Herke v. Iowa Home Mutual Casualty Co.,* 84 N.W.2d 920 (1958); by a *collection agency* of the client, *Chamberlin Co. of America v. Mays,* 101 S.E.2d 728, 98 Ga. App. 755 (1957); by a *foreign embassy* of the client's nation, *Miranosky v. Parson,* 161 S.E.2d 655 (W. Va. 1968); in case of disability, at least, the client's *family, State of N. Y. v. Brown,* 174 N.Y.S.2d 147, 9 Misc.2d 714 (1957); and the client's *brother, Burkhart v. Lasley,* 75 P.2d 1124 (Okla. 1938).

In this case, any doubt of authority should have been resolved in favor of petitioner.

Had Lanning been allowed to act, and Kosher was the one now protesting lack of authority, what would the Courts say in face of the process service on the family and the power of attorney?

The refusal to allow Lanning's participation was a serious denial of due process.

2. The Failure to Appoint Counsel Was a Denial of Due Process Under Amendment XIV to the United States Constitution

The violation of due process, committed by refusal to allow attorney Lanning to act on behalf of petitioner, was compounded by failure of the Bar Association tribunal to confirm his authority by simply then and there appointing him as counsel for petitioner. This is an especially glaring omission in light of state law then existing under the ruling of *In re Metzenbaum*, 22 Wn.2d 75, 154 P.2d 602 (1944), specifically confirming the authority of the Bar Association to appoint counsel for an absent attorney, being tried in a disbarment proceeding. See also *Re Craven*, 178 La. 372, 151 So. 625, 90 A.L.R. 973 (1931), where counsel was appointed before substitute service.

The combined effect of (a) the refusal to allow Lanning's attempted participation; (b) the failure to appoint Lanning or other counsel; with (c) the apparent attitude of the Bar Association of *not wanting counsel* for the accused to participate would seem to demonstrate a conscious desire to conduct a summary type hearing with more concern for speed than for due process which should, in itself, vitiate the entire disbarment proceedings:

> "MR. ROYCE: I wouldn't rely on his presence as making our work any lighter." (St. p. 12, ll. 1, 2)
>
> "MR. WILLIAMS: It could prolong it unreasonably if he happened to be the unreasonable type of attorney—which he is not." (St. p. 12, ll. 3, 4, 5)

Faced with the strong presumption of authority of the appearing attorney, *Hill v. Mendenhall*, 21 Wall (U.S.) 453, 22 L.Ed. 616 (1875); *Osborn v. Bank of United States*, 9 Wheat (U.S.) 738, 6 L.Ed. 204 (1824), and in

light of the gravity of the accusations and the absence of the accused, the failure to assert the unquestionable authority to appoint counsel is a glaring defect in due process.

3. Substitute and Constructive Service Was Inadequate to Constitute Due Process Considering Subject Matter

It is agreed that no direct personal service of any process or notice was made.

The rules, then in effect, provided for mailing and/or substitute service in certain cases. (Appendix C, p. A-24 through A-26) These rules were utilized by service on petitioner's last established office address. There is no indication that any process reached him. All mailed items were returned by postal authorities unclaimed and unopened. (Tr. 28, 33, 36, 39, 43)

> "The criterion whether a statutory provision for notice meets the requirements of due process is not the possibility of conceivable injury but the just and reasonable character of the requirements, *having references to the subject with which the statute deals.*" (Emphasis supplied)

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 94 L.Ed. 865, 70 S.Ct. 652 (1950); and see *American Land Co. v. Beiss*, 219 U.S. 47, 67, 55 L.Ed. 82, 97, 31 S.Ct. 200 (1911):

> ". . . the notice must be reasonable and adequate for the purpose, due regard being had to the *nature of the proceedings and the rights which may be affected by it.*" (Emphasis supplied)

Dohary v. Rogers, 281 U.S. 362, 74 L.Ed. 904, 50 S.Ct. 299, 68 A.L.R. 434 (1930).

Here that "subject matter" was prospective disbarment

—"a punishment or penalty imposed upon the lawyer," in "an adversary proceedings of a quasi-criminal nature," *In re Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968), for the alleged commission of multiple criminal acts. The rights affected were the highly valuable rights to follow his established profession.

If the accused attorney cannot be found to be served, it is highly unlikely he will be practicing law within the jurisdiction. He offers no real threat to the public. Any open attempt to practice will render him amenable to personal service. Thus, the chance of social harm from waiting is minimal compared to the substantial chance of permanent harm to the attorney if disbarment is had without affording him "notice and an opportunity to appear in his own defense". Herein lies a great weakness in the present status of disbarment proceedings. Permitting constructive or substitute service does not guarantee an opportunity to appear and defend. Anything short of such a guarantee is a denial of due process considering the nature of the proceedings, the subject matter and the rights affected.

The power of the Courts to enter judgment of disbarment based on substitute service has been previously upheld upon the basis that disbarment is a judgment *in rem* and not a personal judgment, *Re Craven*, 178 La. 372, 151 So. 625, 90 A.L.R. 973 (1931).

Such rulings are in direct conflict with the rulings of this Court holding disbarment to be "a punishment or penalty imposed upon the lawyer," *In re Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222, and defining the proceedings as "quasi-criminal," *Ruffalo, supra*. Such render

the judgment one *in personam* and the historical justification for substitute service is thus dissolved.

Thus, in keeping with such recent decisions as *In re Gault*, 387 U.S. 1, 18 L.Ed.2d 527, 87 S.Ct. 1428 (1967); *In re Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968); and *Holt v. Commonwealth of Virginia*, 381 U.S. 131, 14 L.Ed.2d 290, 85 S.Ct. 1375 (1965), it should be held that personal service of process is requisite to disbarment proceedings.

4. Cumulative Denial of Due Process Deprived Petitioner of Fair Hearing

Cumulative denial of constitutional due process herein is the combination of the following:

(1) Refusal to allow participation of counsel.

(2) Failure to appoint counsel.

(3) Complete absence of either cross-examination or critical examination of hostile witnesses who admitted their own criminal conduct.

(4) Repeated failure to give proper notice.

(5) Absence of personal service.

"A fair trial in a fair tribunal is a basic requirement of due process." *Holt v. Commonwealth of Virginia*, 381 U.S. 181, 14 L.Ed.2d 290, 85 S.Ct. 1375 (1965); *In re Murchison*, 349 U.S. 133, 99 L.Ed. 942, 75 S.Ct. 623 (1955).

Items (1), (2), and (5) have been discussed above. Item (3)—the absence of cross-examination—was practically assured by refusal to allow participation of counsel and the failure to appoint. However, the Bar Association

trial panel and bar counsel had both the authority and the duty in its obligation to be "fair" to critically question the witnesses and refrain from functioning as prosecutors (Rule III, Appendix C, p. A-19) and did not do so.

Four witnesses against accused admitted their own criminal misconduct:

GLORIA ASHEN (St. pp. 166-192):

"Q. What is your occupation?

"A. Well, I was a madam.—

"Q. Before that, what was your occupation?

"A. I worked as a prostitute.

"Q. For how many years?

"A. I have been a prostitute about fifteen years." (St. p. 166, ll. 23-30)

MARGARET CONKLIN (St. pp. 211-234):

"Q. Did you open up a house of prostitution at that time?

"A. Yes sir." (St. p. 212, ll. 6, 7)

BILL NICKLIN (St. pp. 235-255):

"Q. Did you rent the Sunset Acres to Gloria Ashen?

"A. Yes.

"Q. For what rent?

"A. For $400.00 a month." (St. p. 241, ll. 20-23)

GUSTAVE MEYER (St. pp. 263-291):

"Q. Did you collect any money from Gloria Ashen?

"A. Yes—

"Q. What did you do with that money?

"A. Gave it to Twitchell. Well, not all of it. I got some too, you know." (St. p. 266, ll. 7, 8, 12, 13, 14)

(Explanatory note supplied: "Twitchell" was then a sheriff)

Both Gloria Ashen and Bill Nicklin expressed hostility to petitioner.

GLORIA ASHEN (St. p. 182, ll. 24, 25):

"Q. Why didn't you get along?

"A. We never liked each other."

And Mr. Nicklin also testified to resentment of the petitioner. (St. p. 245, ll. 23-27)

The petitioner was neither present nor represented by counsel. He was charged with committing serious crimes. Yet, in the fact of testimony such as above, there is no cross or critical examination of these witnesses—no testing of veracity or memory, and no inquiry into motivation for testifying. Petitioner was then found guilty, as a matter of fact, of criminal misconduct and his disbarment was based upon such findings. (Appendix B, pp. A-9 through A-13)

Gloria Ashen later retracted her testimony against Kosher by sworn affidavit. (Tr. 199-201)

Foster Rochon, another witness adverse to Kosher, later gave affidavit retracting damaging testimony and stating that his testimony at the hearing was motivated by pressure from law enforcement officials. (Tr. 195-198)

Cross-examination at the hearing could well have completely destroyed the effectiveness of these obviously damaging witnesses.

As stated in *Re Craven*, 151 So. 625, 90 A.L.R. 973 (1931):

> "Some men, and especially those practicing criminal law, by reason of the nature of their occupations, are exposed to the making of false accusations against them by unscrupulous men, and Courts should exercise caution in deciding cases arising out of such accusations. The greater is the care to be exercised when it is made to appear that the determination of the truth of the accusation is largely dependent upon the evidence of witnesses of doubtful veracity."

Item (4)—errors in giving notice and complying with time requirements deprived petitioner of due process.

The record is ripe throughout with numerous procedural and notice deficiencies at all levels of the Bar Association proceedings, and through the state Supreme Court proceedings. These errors go to the essence of notice giving and procedural due process and are set forth at length in Brief of Appellant, presented before the state Supreme Court. (Tr. 273-310)

Notice is an essential element of due process of law. *Schroeder v. New York City*, 371 U.S. 208, 9 L.Ed.2d 255, 83 S.Ct. 279, 89 A.L.R.2d 1398 (1962); *In re Gault*, 387 U.S. 1, 18 L.Ed.2d 527, 87 S.Ct. 1428 (1967); *In re Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968); reh. den. 391 U.S. 961, 20 L.Ed.2d 874, 88 S.Ct. 1833.

To set forth these errors of notice and procedure in detail would necessitate verbatim recitations of rules and repeated record references unduly protracting this petition's length and seems best reserved for detailed briefing in the event this petition is granted.

5. Petition for Discretionary Reinstatement Is Not an Adequate Remedy for Denial of Constitutional Rights and Finding It Sole Remedy Is Further Denial of Due Process

The Court below held (Appendix A, p. A-7 and A-8) as the principal basis for its ruling, that petitioner had an "adequate remedy at law" through petition for reinstatement as currently provided by Discipline Rules for Attorneys (DRA) 8.1 through 8.7 as promulgated by Supreme Court of the State of Washington. (Appendix D, pp. A-42 through A-44)

Such a procedure presumes the validity of the prior disbarment proceedings, (*e.g.* Rule 8.1(a) prohibits filing within one year next after disbarment (Appendix D, p. A-42)) and vests such discretionary powers in the Bar Association Board of Governors as it would wield if considering an original application for first admission. (Rule 8.6(a), Appendix D, p. A-43)

If petitioner was denied due process, his disbarment was void. He cannot be thus put in a position of having to acknowledge the validity of the proceedings and then submit himself to the discretionary powers of the Bar Association. A denial of constitutionally protected due process cannot be so corrected any more than can a void criminal conviction be corrected by reference to parole and pardon possibilities.

It was also argued by the Bar Association and held by the state Supreme Court that petitioners delay in attacking the original judgment constituted "laches" (Tr. 229-247; Appendix A, pp. A-7 and A-8), and that he was thus now estopped. A judgment void for lack of due process is never cured by time.

6. The Modern Practice of Law Involves Federal Law and the Control of Lawyers Is a Matter for Federal Intervention

In current times, the practice of law must of necessity involve repeated, if not almost constant, participation in Federal law and Federal questions; *e.g.* income taxes, death taxes, gift taxes, securities, soldiers and sailors, veterans, draftees, social security, medicare, federal tort claims, truth-in-lending, civil rights, consumer protection, federal crimes, national banks, constitutional questions, to mention only a few. What lawyer, in even the most remote hamlet, does not almost daily encounter at least one of these problems?

The citizens of the United States are entitled to the availability of legal counsel to assist and advise in federal and/or federally related matters. The public suffers from the denial of constitutional protection to such legal counsel. Why is an attorney relegated to any lesser status or rights than the citizen arrested or charged with a crime? Such due process rights of citizen or attorney can only be assured by the promulgation of a fundamental set of guide lines assuring such due process of law in all matters of disbarment.

The instant case involves the question of the basic rights to representation by counsel, personal service, notice, and a fair hearing.

CONCLUSION

This appears to be a case of first impression with broad, nation-wide implications for public and Bar. The entire judicial process is founded on due process rights.

To extrapolate the attorney from the rights afforded to other citizens and relegate him to a lesser status as concerns his franchise right to practice his profession is violative of the basic rights afforded by the Constitution.

Petitioner respectfully petitions this Court to grant a writ of certiorari in this matter to the Supreme Court of the State of Washington and that he be granted an appeal in this Court.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re MAX KOSHER, *Plaintiff*, v. WASHINGTON STATE BAR ASSOCIATION, *Respondent.*	No. C. D. 3129 ORDER

This matter comes before this Court upon plaintiff's original Summons and Complaint in Equity to Vacate Judgment of Disbarment and respondent's Motion to Quash such Summons and Complaint; and it appearing from the files, records, briefs, and oral arguments herein that:

(1) Plaintiff, Max Kosher, was admitted to the practice of law in this state, and subsequently practiced law in Everett, Washington, until his departure from the State of Washington and the United States in late October, 1960;

(2) At the time of plaintiff's departure from the country, the trial in *State v. Twitchell,* 61 Wn.2d 403, 378 P.2d 444 (1963), was then in progress, which trial revolved about the complicity of the Snohomish County Sheriff in unlawfully permitting the practice of prostitution within the county, and to which trial plaintiff had been subpoenaed as a witness;

(3) On or about October 31, 1960, official efforts were made to secure plaintiff's attendance as a witness in the trial of *State v. Twitchell, supra,* pursuant to the out-

standing subpoena. Plaintiff could not be contacted, and on November 3, 1960, a contempt citation and bench warrant for his apprehension were issued which, because of his continued absence from the jurisdiction, could not be served, and which citation and bench warrant remained unserved and unanswered until June, 1966, when such were dismissed;

(4) On or about May 10, 1961, plaintiff and five other persons were named as defendants in an indictment, issued by a federal grand jury, upon charges relating to the promotion and maintenance of prostitution in Snohomish County, Washington. Of those indicted only plaintiff and one other could not be apprehended, and of those apprehended all were convicted except one who testified as a witness;

(5) On or about July 31, 1961, disciplinary proceedings against plaintiff were commenced by respondent, the Washington State Bar Association, by the service of a formal complaint upon a person of suitable age and discretion, one of plaintiff's parents, at plaintiff's usual place of abode, and by forwarding a copy thereof by certified mail to plaintiff's last known law office address;

(6) Subsequently, service of a supplemental complaint and requisite notices were made in the same manner;

(7) Substitute service of the formal complaint, supplemental complaint, and appropriate notice was rendered necessary because plaintiff's whereabouts was unknown;

(8) Rules of Discipline of Attorneys 6B(1) in effect at that time provided, in pertinent part:

FORMAL COMPLAINT AND NOTICE TO ANSWER. A copy of the formal complaint with notice to answer shall be served on the respondent attorney in the following manner:

. . .

b. If the respondent attorney cannot be found, either by leaving a copy at his place of usual abode, if in the State of Washington, with some person of suitable age and discretion then resident therein, or by mailing by registered or certified mail, postage prepaid, a copy addressed to him at his last known (a) place of abode, (b) office address maintained by him for the practice of law, or (c) post office address.

(9) The formal complaints set forth five items revolving about allegations that plaintiff solicited personal bail bond and legal business from prisoners in the Snohomish County jail, that he aided and abetted the carrying on of prostitution in Snohomish County, that he willfully disobeyed the subpoena to testify in the trial of *State v. Twitchell, supra,* and that he misappropriated a sum of money delivered to him by an individual under the mistaken impression that plaintiff had deposited such a sum in cash as the individual's bail, when in fact plaintiff had not done so;

(10) On August 31, 1961, Bill Lanning, an attorney, practicing in Seattle, Washington, engaged by plaintiff's family, filed an answer to the formal complaints purportedly on behalf of plaintiff whereby he controverted the items alleged and requested that the complaints be quashed, any hearing stayed or that, after hearing, the complaints be dismissed.

(11) Pursuant to appropriate notice, the allegations of the complaints came on for hearing in Everett, Wash-

ington, on November 29, 1961, before a duly constituted hearing panel, at which time Mr. Lanning's motion to quash and/or to further stay proceedings was denied;

(12) Concerning Mr. Lanning's retention and authority to represent plaintiff, he stated to the hearing panel

> Gentlemen, I would like to have the record clear as to my position in this matter. I am retained by the family of Max Kosher. I have had no contact with Max Kosher, either directly or indirectly. I have been advised by the people who have retained me, his family, that they have had no contact with him, and that they have had no contact with him since they received a copy of the papers that originated this hearing, which was the Notice to Answer and the Complaint, for the formal complaint and amended complaint, or supplemental complaint in this proceeding.
>
> I have requested that they make available to me any means that they had of contacting Mr. Kosher. They have advised me that they have no means of contacting him, either directly nor *[sic]* indirectly.

(13) After discussion between Bar Association counsel, Mr. Lanning and the panel members regarding the confidentiality of the disciplinary hearing procedure, Mr. Lanning's lack of direct authority from plaintiff, his inability and the alleged inability of plaintiff's family to locate or communicate with plaintiff, and the absence of his authority to bind plaintiff in any fashion by his presence, Mr. Lanning further stated: "If I don't represent him, then I have no place here." The hearing panel then concluded that Mr. Lanning lacked the requisite consent and authority from plaintiff to appear before the panel as a bona fide legal representative of plaintiff, and he was accordingly excused;

(14) On September 20, 1960, plaintiff executed a power of attorney to his brother William Kosher; however, this power of attorney was not filed for record until January 5, 1962, and its existence was not made known to respondent, the hearing panel or, apparently, Mr. Lanning, although William Kosher was available at the time Mr. Lanning appeared before the hearing panel and was later called as a witness to testify before the hearing panel;

(15) Contrary to Mr. Lanning's statement that plaintiff's family had denied any contact or means of contact with plaintiff, both William Kosher, his brother, who lived at plaintiff's usual place of abode in Everett with plaintiff's parents, and Foster James Rochen, a close friend of plaintiff who had accompanied him when he departed the country in October, 1960, later testified before the hearing panel they had been in communication with plaintiff, knew of an address for him and had communicated that address to an attorney who worked for a while in plaintiff's law office, none of which information had theretofore been communicated to the Bar Association or apparently to Mr. Lanning;

(16) The hearing panel, proceeding in the same manner as though plaintiff were present and had entered a general denial to the items of the formal complaints, heard, examined, and considered extensive and substantial testimony and evidence bearing directly upon plaintiff's activities as they related to the items of misconduct alleged in the formal complaints, and, on January 2, 1962, entered detailed findings of fact, conclusions, and recommendations by the terms of which the panel determined that plaintiff had committed the items of misconduct asserted in the formal complaints all in violation of the pertinent

Canons of Professional Ethics and recommended plaintiff's disbarment;

(17) The Board of Governors of the Washington State Bar Association reviewed the record made before the hearing panel, its findings, conclusions, and recommendations and adopted them, and thereupon recommended to this Court that plaintiff be disbarred. This Court, after fully considering the factor of plaintiff's absence from the jurisdiction and the record made before the hearing panel, concluded in *In re Kosher*, 61 Wn.2d 206, 377 P.2d 988 (1963), at pages 208 and 210 that:

> During the course of this disciplinary proceeding, the hearing panel and the board of governors complied with the procedural requirements set forth in the Rules for Discipline of Attorneys, RCW Vol. 0, which were adopted by this court and became effective on January 2, 1961.
>
> Evaluation of the several charges and the record supporting them can lead to no other conclusion than that the recommendation of the Board of Governors of the Washington State Bar Association should be accepted by this court. Therefore, it is hereby ordered that Max Kosher is disbarred from the practice of law in the state of Washington and that his name shall be stricken from the roll of attorneys.

(18) Plaintiff by his affidavit now asserts that at all times concerned with respect to the disciplinary proceedings his brother—and presumably his parents with whom his brother lived—knew of his whereabouts and was in contact or could be in contact with him; yet, despite the fact his family was concerned enough with the disciplinary proceedings to undertake to engage counsel on his behalf, plaintiff contends they did not consult or advise with him about the proceedings;

(19) By way of his affidavit plaintiff further asserts he returned to the United States sometime in 1963, and thereafter refrained from taking this action until 1971, some 10 years after the proceedings before the hearing panel and at a time when pertinent statutes of limitation may have run, crucial witnesses may have died, disappeared or forgotten significant details, and at a time when a true reconstruction of the events and conduct leading up to and resulting in the disciplinary proceedings against him would be virtually impossible;

(20) Rules 8.1 through 8.7, Discipline Rules for Attorneys, provide for an investigatory and hearing process of reinstatement to membership and good standing as an attorney and under all of the circumstances constitute an adequate and timely remedy for plaintiff.

NOW, THEREFORE, based upon the foregoing, including the circumstances surrounding plaintiff's departure from the country; the substantial and credible evidence of plaintiff's unprofessional conduct presented before the hearing panel, the Board of Governors of the Washington State Bar Association, and this Court; the incongruity of plaintiff's contention that a member or members of his family and others at all times concerned knew his whereabouts and could communicate with him, the disclaimer of this knowledge by members of plaintiff's family to Mr. Lanning, the attorney engaged by the members of the family on plaintiff's behalf, and plaintiff's present disclaimer of any knowledge of the disciplinary proceedings until his return to this country in 1963; plaintiff's laches in pursuing the remedy he now seeks in this action; the realistic impracticability of presently reconstructing the

events and conduct leading up to and culminating in the disciplinary proceedings against him; and the availability of an alternative and adequate remedy by way of a petition for reinstatement,

IT IS HEREBY ORDERED That plaintiff's complaint be and the same is hereby dismissed.[1]

ORRIS L. HAMILTON
Chief Justice
ROBERT C. FINLEY
HUGH T. ROSELLINI
HUNTER, J.
FRANK HALE
MARSHALL A. NEILL
CHARLES T. WRIGHT
FRANK W. RYAN
(*Pro Tem*)

1. The proper avenue of relief, if any, lies in the procedures set forth in DRA 8.1 through 8.7.

APPENDIX B

[No. C.D. 3129. En Banc. January 10, 1963.]

In the Matter of the Disciplinary Proceeding Against MAX KOSHER, *an Attorney at Law.*

Proceedings filed in the Supreme Court May 24, 1962, for the discipline of an attorney. *Judgment of disbarment.*

T. M. Royce, for Board of Governors.

FINLEY, C. J.—The Board of Governors of the Washington State Bar Association has recommended that this court disbar Max Kosher from the practice of law in the state of Washington. In making that recommendation, the board has approved and adopted the conclusions of the hearing panel which initially heard this disciplinary matter.

Mr. Kosher was admitted to the practice of law in this state on September 10, 1947, and, subsequently, practiced law in Everett, Washington, until his disappearance on or about October 22, 1960.

This disciplinary proceeding was commenced by service of a formal complaint at Max Kosher's usual place of abode in Snohomish County, where it was left with Celia Kosher, a person of suitable age and discretion, on July 31, 1961. The following day a copy of the complaint was sent by certified mail to Mr. Kosher's last known office address, maintained by him for the practice of law. Rules for Discipline of Attorneys 6 B(1), RCW Vol. 0, provides:

> "*Formal Complaint and Notice to Answer.* A copy of the formal complaint with notice to answer shall be served on the respondent attorney in the following manner:
>
> "a. If the respondent attorney is found in the state of Washington, by personal service upon him in the manner as is required for personal service of sum-

mons in civil actions in the superior court in the state of Washington on the effective date of these rules.

"b. *If the respondent attorney cannot be found,* either by leaving a copy at his place of usual abode, if in the state of Washington, with some person of suitable age and discretion then resident therein, or by mailing by registered or certified mail, postage prepaid, a copy addressed to him at his last known (a) place of abode, (b) office address maintained by him for the practice of law, or (c) post office address.

"c. If the respondent attorney is found outside of the state of Washington, then by personal service. . . ." (Italics ours.)

During this disciplinary proceeding the whereabouts of Mr. Kosher were unknown; therefore, subsection (b) of the above-quoted rule is applicable, and the method of service utilized complied with the requirements of that rule.

Mr. Kosher did not reply to either the complaint or to any of the other papers subsequently served in the same manner. Therefore, acting under the provisions of Rules for Discipline of Attorneys 7 G, RCW Vol. 0, the hearing panel proceeded to a determination of the complaint against Mr. Kosher in the same manner as though he had been present and had answered by a general denial. During the course of this disciplinary proceeding, the hearing panel and the board of governors complied with the procedural requirements set forth in the Rules of Discipline of Attorneys, RCW Vol. 0, which were adopted by this court and became effective on January 2, 1961.

The original complaint against Max Kosher contained four items, and a fifth item was later incorporated by means of an amended complaint.

*Reported in 377 P. (2d) 988.

The first and second items are sufficiently related that it is appropriate to discuss them together. It was alleged, and the record supports the allegation, that Max Kosher engaged in a steady practice of calling upon prisoners in the Snohomish County jail and offering to supply bail for a fee and/or to act as their counsel. Usually, these calls were made without any solicitation by the prisoners, and Mr. Kosher generally lacked any prior personal acquaintanceship with those prisoners. In conjunction with the foregoing activity he solicited employees of the jail to suggest that prisoners retain Mr. Kosher as their counsel, and to inform him of prisoners who would be potential clients. During various periods of time, Mr. Kosher paid some employees of the county jail to engage in this practice of solicitation. This pattern of conduct is in clear violation of Canon of Professional Ethics 27, RCW Vol. 0, relating to solicitation of professional employment.

[1] Mr. Kosher often requested and received a separate fee for his posting of bail for prisoners in the Snohomish County jail. RCW 19.72.020 prohibits attorneys from acting as sureties on bail bonds. In the May-June 1954 issue of the Washington State Bar News (p. 21), an opinion of the Ethics Committee, relating to RCW 19.72.020, was published. The opinion stated:

". . . we do not feel within the spirit of the above statute and the general ethical requirements rightfully imposed upon an attorney-at-law, that he should attempt to furnish cash bail for persons accused of crime, and *make a specific charge therefor.*" (Italics ours.)

We concur in that opinion and believe that in view of Mr. Kosher's soliciting activities his posting of bail for a fee was unethical.

[2] In the present disciplinary proceeding Mr. Kosher is also charged with having aided and abetted the illicit practice of prostitution in Snohomish County. The record herein clearly indicates that Max Kosher actively participated in: (1) the establishment of houses of prostitution, (2) the securing of women essential to their operation, (3) the direction of some "customers" to the brothels, and (4) the collection and apparent sharing in an overhead fee (which could be referred to as a protection or organization fee). There can be no doubt that the aforementioned activities of Mr. Kosher involved moral turpitude. Rule for Discipline of Attorneys 1 A, RCW Vol. 0, provides that an attorney may be disbarred for the commission of an act involving moral turpitude, and a criminal conviction shall not be a condition precedent to disciplinary action.

[3] On October 3, 1960, Mr. Kosher was personally subpoenaed as a witness for the trial of Sheriff Robert Twitchell. Later, on the 18th of October, the special prosecutor agreed to excuse Mr. Kosher from attendance at the trial on the understanding that he would remain available to appear and testify on 24-hour notice. Thus, Mr. Kosher's departure from the jurisdiction on or about October 22, 1960, was in defiance of the superior court which had issued the subpoena. Such a defiance was contrary to his obligation and responsibilities as an officer of the court.

The fifth charge against Mr. Kosher relates to misconduct in reference to a client. The client was arrested on October 9, 1960, for drunk driving and was incarcerated in the Snohomish County jail. On the following day, the client phoned Mr. Kosher, who secured his release and collected fifty dollars for his services. Mr. Kosher also represented

to the client that he had posted a $300 cash bail bond for his release. On October 11, 1960, the client appeared by himself in justice court. At that time, the judge informed him that he should have an attorney because a conviction might result in the suspension or revocation of his driver's license. Two days later, the client conferred with Mr. Kosher, who agreed to defend him in justice court. At that time, the client reimbursed Mr. Kosher for the $300 which Mr. Kosher had purportedly posted as a cash bond. Mr. Kosher deposited the $300 in his general account and left the jurisdiction prior to the date of the client's trial. On October 17, Mr. Kosher deposited a property bond with the court for his client. Subsequently, the client appeared by himself, and was convicted of the traffic violation. The client then requested that the court return his cash bond less the amount of his fine. It was then that the client learned that Mr. Kosher had not deposited the $300 cash bond. These facts indicate that Mr. Kosher secured the $300 by false representation, and then appropriated the same to his own use.

[4] Evaluation of the several charges and the record supporting them can lead to no other conclusion than that the recommendation of the Board of Governors of the Washington State Bar Association should be accepted by this court. Therefore, it is hereby ordered that Max Kosher is disbarred from the practice of law in the state of Washington and that his name shall be stricken from the roll of attorneys.

HILL, DONWORTH, WEAVER, ROSELLINI, OTT, HUNTER, and HAMILTON, JJ., concur.

APPENDIX C

RULES FOR DISCIPLINE OF ATTORNEYS

[Adopted November 2, 1960; effective January 2, 1961.]

Authority

The following rules of procedure relative to matters of discipline and disbarment are promulgated pursuant to authority granted to the Supreme Court.

RULE I.

GROUNDS

An attorney at law may be censured, reprimanded, suspended, or disbarred for any of the following causes, hereinafter sometimes referred to as violations of the rules of professional conduct:

A. The commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his relations as an attorney, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon such conviction, however, the judgment and sentence shall be conclusive evidence, at any ensuing disciplinary hearing, of the guilt of the respondent attorney of the crime described in the indictment or information, the statute upon which it is based, and the judgment and sentence. A disciplinary hearing as provided in Rule VII of these rules shall be had to determine only whether moral turpitude was in fact an element of the crime committed by the respondent attorney.

B. Wilful disobedience or violation of a court order directing him to do or cease doing an act connected with his practice of law, which he ought in good faith to do or forbear.

C. Violation of his oath or duties as an attorney.

D. Corruptly or, without authority, wilfully appearing as an attorney for a party to an action or proceeding.

E. Lending his name to be used as attorney by another person who is not an attorney authorized to practice law in the State of Washington.

F. Misrepresentation or concealment of a material fact made in his application for admission or reinstatement or in support thereof.

G. Suspension or disbarment by competent authority in any state, federal or foreign jurisdiction.

H. Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney, or with any person not authorized to practice law.

I. Gross incompetency in the practice of law.

J. Violation of the Canons of Ethics of the profession adopted by the Supreme Court of the State of Washington.

K. Membership in any party or organization knowing that it has for its purpose and object the overthrow of the United States Government by force or violence.

L. Wilful violation of Rule II G or wilful disregard of the subpoena or notice of the Local Administrative Committee, Hearing Panel, or Board of Governors of the Washington State Bar Association.

M. A course of conduct demonstrating unfitness to practice law.

Rule II.

LOCAL ADMINISTRATIVE COMMITTEES

A. Appointment. The Board shall appoint a Local Administrative Committee consisting of three or more members in each county or district as herein defined. The Board may create districts consisting of two or more counties, a portion of one or more counties, or one or more counties and a portion of one or more counties. These Committees shall be known as "Local Administrative Committee of ..... County (or ..... District)." All members of the Local Administrative Committees shall be chosen by the Board from the active members of the Association whose residences are in the county or district for which they are appointed.

B. Term of Office. The members of the Local Administrative Committees shall be appointed for terms of three years or until their successors are appointed, and their terms shall be so staggered that one or more shall be appointed each year. The Board shall designate each year one member of each Local Administrative Committee to serve as chairman thereof for one year or until his succes-

sor is appointed. Members heretofore appointed by the Board shall serve out their regular terms. Members may be removed from office at any time and their successors appointed to serve during the remainder of the unexpired term.

C. Duties. It shall be the duty of a Local Administrative Committee to: (1) investigate promptly all complaints referred to it by the Board or received directly by the Committee in writing concerning any attorney who has his place of abode or practices within the county or district of such committee, (2) take cognizance of any alleged violation of the rules of professional conduct brought to its attention whether or not a complaint be received, (3) make prompt reports to the Board containing complete findings of fact and its opinion as to whether or not reasonable cause exists for further proceedings as hereinafter provided, and (4) perform such other duties and transact such other business of a local nature for and on behalf of the Association as shall be referred to it from time to time by the Board.

D. Trivial Matters. The Committee shall have power to settle and dispose of complaints of a trivial nature; provided, however, a complete report of the disposition of each such complaint shall be made to the Board.

E. Settlement, Compromise or Restitution. Settlement of, compromise of, or restitution in a matter shall not justify the Committee in failing to undertake or complete its investigation and report thereon to the Board.

F. Reports. Each Local Administrative Committee shall, not later than the 10th day of January, April, July and October of each year, prepare and file with the Board, upon

forms prepared by the Board, a list of all matters and proceedings before the Committee, and note thereon the progress, if any, of each of the matters and proceedings since the last report of the Committee.

Reports made by the Local Administrative Committees with regard to all matters investigated by them are confidential and shall be given only to the Board, or to the Supreme Court upon its request; provided that, if requested by the attorney investigated, or in writing by the person complaining against him, the opinion, whether or not reasonable cause exists for further proceedings, may be furnished to the requester. Such reports shall form a part of the permanent records of the Association and may be used as a basis for proceedings under Rule I.

G. Cooperation. It shall be the duty and the obligation of an attorney against whom a complaint has been made and who is being investigated by the Local Administrative Committee to cooperate with the Committee as requested by it by (1) furnishing any papers or documents, (2) furnishing in writing a full and complete explanation covering the matter contained in such complaint, and (3) appearing before the Committee at the time and place designated. Should such attorney fail so to cooperate with the Committee in the manner herein provided, the Committee shall report the same to the Board, and such failure may constitute a violation of the rules of professional conduct.

H. Perpetuation of Testimony. Where, in the discretion of a Local Administrative Committee, there is reasonable cause to believe that testimony should be perpetuated, the Committee may, upon reasonable notice to the attorney investigated, cause the deposition of any witness to be taken under oath before a notary public or before any

other officer authorized by the law of the jurisdiction where the deposition is taken to administer an oath, and have the same transcribed for use in any further proceedings under these rules to which the said attorney may be a party. Save as in this paragraph specifically provided, proceedings before a Local Administrative Committee shall be informal and witnesses shall not be sworn.

Rule III.

STATE BAR COUNSEL

The Board shall employ a suitable person or persons from among the members of the Association to act as counsel for the Association in respect to matters of discipline and reinstatement of members, including the investigations, hearings and appeal incident thereto, and to perform such duties as shall be required by the Board.

The general function of the State Bar Counsel in all investigations and hearings shall be to present all the material facts to the appropriate Panel or Court. His function is not that of a prosecutor.

Rule IV.

DUTY OF COMPLAINANT

Upon request, the person complaining shall furnish to the Local Administrative Committee or State Bar Counsel all documentary and other evidence in his possession and the names and addresses of witnesses, and assist in securing evidence in relation to the facts charged.

Rule V.

TRIAL COMMITTEES

A. Appointment. The Board shall appoint a Trial Committee consisting of three or more members in each county

or district as herein defined. The Board may create districts consisting of two or more counties, a portion of one or more counties, or one or more counties and a portion of one or more counties. Those Committees shall be known as "Local Trial Committee of ..... County (or ..... District)". All members of Local Trial Committees shall be chosen by the Board from the active members of the Association whose residences are in the county or district for which they are appointed.

B. TERM OF OFFICE. The members of Local Trial Committees shall be appointed for terms of three years or until their successors are appointed, and their terms shall be so staggered that one or more shall be appointed each year. Members heretofore appointed by the Board shall serve out their regular terms. Members may be removed from office at any time and their successors appointed to serve during the remainder of the unexpired term. Any member designated to serve on a Hearing Panel, in accordance with Rule V C, shall continue as a member of the Local Trial Committee until the completion of his duties as a member of the Panel to which he was assigned notwithstanding his appointed term as a member of the Local Trial Committee expires after his assignment to the said Panel.

C. HEARING PANEL. Each disciplinary matter referred for hearing shall be heard by a three-member Hearing Panel appointed by the President of the Association at the time he signs the formal complaint. The Panel shall be composed of one member from the Board and two members from the Local Trial Committee of the county or district where the respondent attorney had his residence at the time of the alleged violation of the rules of professional conduct. The Board may direct a hearing which has been assigned

to a Panel in one county or district transferred to another Panel in the same county or district or to a Panel in another county or district or to a special Panel appointed by the President, the Local Trial Committee members of which two last mentioned Panels need not have their residences in the same county or district as that in which the respondent attorney had his residence at the time of the alleged violation.

D. DUTIES. It shall be the duty of the Panel to whom a cause has been referred for hearing to conduct the hearing in the manner hereinafter provided. The Panel shall pass on all questions of procedure and admission of evidence, and in case of disagreement a majority of the members of the Panel shall decide each point or objection as the same shall arise. The Panel shall make its findings, conclusions and recommendation, submitting them to the Board together with all pleadings, documents and exhibits within 15 days from the date the taking of evidence is concluded.

In the event of disagreement the members shall file independent findings, conclusions and recommendations within the time aforesaid.

E. MEMBERS OF THE BOARD ON PANELS. Each Panel shall have as its chairman a member of the Board, but such member shall not be a resident of the county or congressional district in which the respondent attorney resided at the time of the occurrence of the alleged violation of the rules of professional conduct.

The chairman shall settle the necessary pleadings, preside at the hearing, conduct the hearing with the assistance of the other members of the Panel, see that the findings, conclusions and recommendation are submitted to the Board in

accordance with Rule V D, and perform such other duties as shall be required of him by the Board.

RULE VI.

PLEADINGS AND SERVICE

A. PLEADINGS. The only pleadings permissible upon proceedings before a Panel are a formal complaint, a notice to answer, answer to complaint, and motions to make more definite and certain or in the alternative for a bill of particulars, and, if directed, a bill of particulars. Informality in the complaint or answer shall be disregarded.

1. FORMAL COMPLAINT. If the Board finds a hearing should be had to determine whether a violation of the rules of professional conduct has occurred, a formal complaint shall be prepared and filed in the office of the Association and proceedings shall be had thereon as hereinafter provided. The formal complaint, which need not be verified, shall set forth the particular acts or omissions of the respondent attorney in such detail as to enable him to know the charge against him and shall be signed by the President and State Bar Counsel.

2. FORM OF NOTICE TO ANSWER. The notice to answer shall be substantially in the following form:

STATE OF WASHINGTON
BEFORE THE BOARD OF GOVERNORS OF THE WASHINGTON STATE BAR ASSOCIATION

In re ....., an Attorney at Law: NOTICE TO ANSWER

To the above named attorney at law:

You are notified that a formal complaint has been filed against you, a copy of which is hereto attached and herewith served upon you.

You are notified that you may answer said complaint by filing the original and four copies of your answer in the office of the Washington State Bar Association, at the address below stated. If the complaint was served upon you personally in the State of Washington you may have twenty days, exclusive of the date of service, in which to file such answer. If the complaint was served upon you in any other manner, or outside the State of Washington, or mailed to you, then you may have thirty days from the date of service, or the date of the mailing of the complaint to you, in which to answer.

Upon the filing of your answer a hearing will be had upon the allegations of the complaint, and such further proceedings will be had as the facts and the law shall warrant.

In case of your failure to answer, further proceedings will be had in accordance with the rules of discipline.

WASHINGTON STATE BAR ASSOCIATION

By .....
State Bar Counsel

Address: .....

....., Washington

Date of Mailing: The..... day of..... 19.....

3. FORM OF ANSWER AND VERIFICATION. The answer must contain:

a. A general or specific denial of each material allegation of the complaint that is controverted by the respondent attorney, or of any knowledge or information thereof sufficient to form a belief;

b. A statement of any matter constituting a defense or

justification, in ordinary and concise language without repetition;

c. An address at which all further pleadings, notices or other documents in relation to the proceedings may be served upon the respondent attorney.

The answer shall be verified before some officer authorized to administer oaths. The original and four copies of the answer shall be filed in the office of the Association.

4. AMENDMENTS. A complaint may be amended at any time to set forth additional facts, whether occurring before or after commencement of the hearing, either in amplification of the original charge or to add new charges. In case of such amendment the respondent attorney shall be given a reasonable time, to be fixed by the chairman of the Panel, to answer the amendment, to procure evidence, and to defend against the charges set forth therein. The chairman of the Panel may at any time allow or require other amendments to the complaint or to the answer.

5. TIME WITHIN WHICH TO ANSWER. If personal service is made upon the respondent attorney in the State of Washington he shall be allowed twenty days from the date of service, exclusive of the date of service, in which to answer; if service is made in any other manner or place, the respondent attorney shall be allowed thirty days from the date of service, or the date of mailing, exclusive of the date of service or mailing, in which to answer.

6. EXTENSION OF TIME TO ANSWER. For good cause shown the chairman of the Panel may extend the time for answer.

B. SERVICE

1. FORMAL COMPLAINT AND NOTICE TO ANSWER. A copy

of the formal complaint with notice to answer shall be served on the respondent attorney in the following manner:

a. If the respondent attorney is found in the State of Washington, by personal service upon him in the manner as is required for personal service of summons in civil actions in the Superior Court in the State of Washington on the effective date of these rules.

b. If the respondent attorney cannot be found, either by leaving a copy at his place of usual abode, if in the State of Washington, with some person of suitable age and discretion then resident therein, or by mailing by registered or certified mail, postage prepaid, a copy addressed to him at his last known (a) place of abode, (b) office address maintained by him for the practice of law, or (c) post office address.

c. If the respondent attorney is found outside of the State of Washington, then by personal service.

d. If the respondent attorney has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, service shall also be had on his guardian or guardian ad litem.

2. Other Pleadings, Notices or Other Documents. Service upon the respondent attorney of any pleadings, notices or other documents required by these rules to be served, other than the formal complaint and notice to answer, may be made by mailing the same, postage prepaid, to or leaving the same at the address set forth in his answer, or, in the absence of any answer, by mailing the same, postage prepaid, to or leaving the same at the address of the respondent attorney on file in the office of the Association.

Service upon the Association of any pleadings, notices or other documents may be made by filing the same in the office of the Association.

3. MAILING. When such other pleadings, notices, or documents are to be served by mail they shall be sent by registered or certified mail with postage prepaid.

4. PROOF OF SERVICE. An affidavit of service, sheriff's return of service, or a signed acknowledgment of service, upon being filed in the office of the Association, shall be proof of such service.

RULE VII.

DISCIPLINARY HEARINGS

A. WHERE HELD. All disciplinary hearings shall be held in the county where the attorney complained against had his residence at the time of the alleged violation of the rules of professional conduct, unless otherwise directed by the Board or the Panel.

B. DATE OF HEARING. Upon filing of the answer, or upon expiration of the time for filing the same, the chairman of the Panel shall forthwith fix the time and place for hearing and the complainant shall be notified thereof. If the respondent attorney has answered, notice of the date of hearing shall be served upon him not less than 20 days prior thereto.

C. POSTPONEMENTS. At the time and place appointed for the hearing the Panel shall proceed with the hearing, unless for good cause the Panel shall grant a postponement, but no postponement shall be longer than thirty days and the total period of time of all postponements shall not exceed sixty days unless approved by the Board.

D. REPRESENTATION. The Association shall be represented at hearings before the Panels by State Bar Counsel. The respondent attorney may be represented by counsel if he so desires.

E. DISQUALIFICATION. The names and office addresses of the Panel who will conduct the hearing shall be served upon the respondent attorney at the same time that the formal complaint is served or within a reasonable time thereafter. If the respondent attorney desires to challenge for cause any such member or members he shall do so in writing stating his reasons for such challenge or challenges at least ten days prior to the hearing. The unchallenged members or member of the Panel shall rule upon the challenge or challenges. If a challenge is sustained, the President of the Association shall forthwith appoint some person or persons of the stated qualifications to fill the vacancy or vacancies on the Panel. In the event challenges are directed against all the members of the Panel the president of the Association shall rule upon the challenges. The respondent attorney shall have the right to challenge any appointee to fill the vacancy on the Panel in the same manner and within such period as shall be provided in the order sustaining the prior challenge.

F. JOINDER OF COMPLAINTS. The Board in its discretion may consolidate for hearing two or more charges as to the same attorney, or may join the charges as to two or more attorneys in one formal complaint.

G. DEFAULT. In no event shall a default be entered against the respondent attorney. If he fails to answer the complaint within the time allowed by these rules the Panel shall proceed to a determination of the matter in the same

manner as though the respondent attorney were present and had answered by a general denial. No notice of the date of hearing or the names of the Panel members or of the taking of depositions of witnesses to be used at the hearing shall be required to be given to such respondent attorney failing to answer. If the respondent attorney has answered but fails to attend the hearing at the time set, the Panel shall proceed to a determination of the matter in the same manner as though the respondent attorney were present.

H. PUBLIC EXCLUDED FROM HEARING. Unless a public hearing is requested in writing by the respondent attorney, the hearing of a disciplinary matter before a Panel shall not be public.

I. PROCEDURE. Each member of the Board shall have power to issue subpoenas to compel the attendance of witnesses or the production of books or documents at such hearings. The respondent attorney shall have opportunity to make his defense and may have issued such subpoenas as he may desire and as any member of the Board deems necessary. Subpoenas shall be served in the same manner as in civil cases in the Superior Court of the State of Washington. Witnesses shall testify under oath administered by the chairman of the Panel. Testimony shall be taken in writing and may be taken by deposition in accordance with these rules.

J. DEPOSITIONS. Depositions for use at the hearing may be taken either within or without the state, upon either written or oral interrogatories before any member of the Panel or before any other officer authorized to administer an oath by the law of the jurisdiction where the deposition is taken. The manner of taking such depositions shall con-

form as nearly as practicable to that prescribed for the taking of depositions in the Superior Court of the State of Washington except as otherwise provided in these rules.

The President of the Association or chairman of the Panel shall have the power to order the taking of depositions and to make such further orders relative thereto, including provision for the expense thereof, as will insure a fair and impartial hearing to the respondent attorney.

Where depositions are taken without the State a commission need not issue, but a copy of the order so made certified to be such by the President of the Association or the chairman of the Panel shall be sufficient authority to authorize the taking of such depositions. All depositions when taken shall be filed in the office of the Association.

K. Mental Illness of Respondent Attorney

1. Notice to Guardian.

If the respondent attorney has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and a guardian of his person has been appointed in this state, all pleadings, notices or other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian.

If a guardian of his person has not been appointed in this state, the Chief Justice of the Supreme Court shall, on application of the Association, appoint a member of the Washington State Bar Association as guardian ad litem for the respondent attorney. The file in such proceedings shall be kept sealed. All pleadings, notices or other documents herein required to be served upon the respondent attorney shall likewise be served upon such guardian ad litem and

the guardian of the person of the respondent attorney, if any, appointed in another state, and all proceedings on the complaint as to the respondent attorney shall be determined as hereinafter provided.

2. Hearing as to Mental Capacity to Defend.

If the respondent attorney has not been judically declared to be of unsound mind, or incapable of conducting his own affiairs, but it shall appear to the chairman of the Panel that there is reasonable cause to believe that the respondent attorney is of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him, the chairman of the Panel shall fix a time and place for a hearing before the Panel on the sole issue of the respondent attorney's mental capacity to defend the formal complaint against him. It shall be the duty of the chairman of the Panel to appoint counsel to act for and on behalf of the respondent attorney in the proceedings in this subsection provided, should the respondent attorney not have counsel of his own choosing.

If it shall be determined by the Panel that said respondent attorney is mentally capable of conducting a proper defense, the proceedings shall continue in accordance with Rule VII A through J, inclusive. If, however, it shall be determined by the Panel that the respondent attorney is not mentally capable of conducting a proper defense, the Chief Justice of the Supreme Court, on application of the Association, shall appont a member of the Washington State Bar Association as guardian ad litem for the respondent attorney. The file in such proceeding shall be kept sealed. All pleadings, notices and other documents herein required to be served upon the respondent attorney shall

likewise be served upon such guardian ad litem and all proceedings on the complaint made as to the respondent attorney shall be determined as hereinafter provided.

3. Hearing in Abeyance.

Should the respondent attorney have been judicially declared to be of unsound mind, or incapable of conducting his own affairs, or, upon the hearing as provided in Rule VII K 2, have been found to be of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him, all proceedings based upon the formal complaint for alleged violation of the rules of professional conduct shall be held in abeyance until such time as it shall appear that the respondent attorney is mentally capable of conducting a proper defense thereto, and proceedings shall be instituted instead in accordance with Rule VII K 4.

4. Submission of Mental Illness Record to Supreme Court.

If the respondent attorney has been judicially declared to be of unsound mind or incapable of conducting his own affairs a certified copy of the judgment or order of the court so declaring shall be forthwith filed with the Board which shall transmit such record to the Supreme Court with its recommendation.

If the decision of the Panel after the hearing as provided in Rule VII K 2 is that the respondent attorney is of unsound mind to the extent that he is incapable of conducting a proper defense to the formal complaint against him the evidence relating thereto shall be filed with the Board. If the Board concurs in the decision of the Panel,

the Board shall transmit the record to the Supreme Court with its recommendation; if the Board does not concur, the Panel shall continue in accordance with Rule VII A through J inclusive.

After the receipt of the record relating to the judicial proceedings or to the decision of the Panel the Supreme Court, in its discretion, after a hearing following twenty days' notice to the respondent attorney, and to his guardian or counsel if such there be, may strike the name of the respondent attorney from the roll of active members of the Association and place his name upon the roll of inactive members. If the attorney's name is so stricken the court shall direct all further proceedings on the formal complaint be held in abeyance in accordance with Rule VII K 3 until such time as it shall appear to the Board, upon application made by or on behalf of the respondent attorney, that he is mentally capable of conducting a proper defense to the formal complaint in question. Thereafter a hearing on the formal complaint and proceedings thereunder shall be had as is provided by these rules in other cases. If the Board concludes the charge or charges in the formal complaint have not been sustained or, having been sustained, do not warrant suspension or disbarment, the respondent attorney shall thereupon be restored to the roll of active members of the Association.

Rule VIII.

PROCEEDINGS AFTER HEARING

A. Notices. When the findings, conclusions and recommendation of a Panel are filed in the office of the Association a copy thereof and a notice of filing with a copy of Rule VIII shall be served upon the respondent attorney or

his counsel. If requested in writing by the person complaining against the respondent attorney, the recommendation of the Panel shall be furnished to such person.

B. Statement in Support or Opposition. At any time within twenty days after the service of the above-mentioned notice the State Bar Counsel and the respondent attorney shall have the right to file with the Board a typewritten statement in support of or in opposition to the findings, conclusions and recommendation of the Panel, setting forth facts, alleged errors of law or any other matter in support of such statement. A copy of such statement, when filed, shall be served on the respondent attorney or his counsel, or State Bar Counsel, as the case may be.

C. Additional Hearing. In making the above statement in support of or in opposition to the findings, conclusions and recommendation of the Panel, State Bar Counsel or the respondent attorney may request an additional hearing before the Panel based on the ground of adidtional evidence; provided, however, that such statement shall contain a complete outline of such additional evidence and shall set forth the reasons why the same was not presented at the hearing, all supported by affidavit or affidavits. Such request may be granted or denied in the discretion of the Board.

D. Board Review. Each proceeding in which a hearing has occurred shall be reviewed by the Board upon the record made and filed in the office of the Association, together with the statements in support of or in opposition together with the statements in support of or in opposition to such findings, conclusions and recommendations as provided by Rule VIII, B and C. Neither State Bar Counsel nor

the respondent attorney shall be entitled to be heard orally in such review, unless otherwise ordered by the Board.

The Board or the chairman of the Panel may have all of the testimony transcribed. If a transcript of the testimony is made, a copy thereof shall be served upon the respondent attorney or his counsel and State Bar Counsel, each of whom shall have ten days from the date of service of the testimony transcribed. If a transcript of the testimony is made, a copy thereof shall be served upon the respondent attorney or his counsel and State Bar Counsel, each of transcript to file objections to the contents thereof with the chairman of the Panel. The objections shall clearly state the errors alleged to exist in the transcript and shall be deemed filed at the time the same are delivered to the office of the Association or are deposited in the United States mail, properly addressed to the said chairman, in care of the office of the Association, at its address, with postage prepaid. The Panel shall thereupon settle the transcript either upon the written objections of the respondent attorney or his counsel and State Bar Counsel or after argument, if argument is deemed necessary by the chairman of the Panel.

Prompt decision of the Board upon such review shall be made. The Board shall make findings, conclusions and its recommendation as to whether the formal complaint shall be dismisssed, or there shall be no discipline, or the respondent attorney shall be censured, reprimanded, suspended or disbarred, and a copy thereof shall be served on the respondent attorney. If requested in writing by the person complaining against the respondent attorney, the recommendation of the Board shall be furnished to such person.

If the formal complaint is dismissed or if there is no recommendation of discipline by the Board or if the recommendation is that the respondent attorney be censured or reprimanded and the censure or reprimand is accepted by the respondent attorney, the record of the proceedings shall be retained in the office of the Association, with notice thereof sent to the Supreme Court, which notice shall remain confidential, and such censure or reprimand shall be given privately by the board; provided, however, if the respondent attorney has a previous reprimand on his record, the current reprimand may be published in full in the next issue of the Washington State Bar News.

If the recommendation of the Board is that the respondent attorney be censured or reprimanded and such recommendation is not accepted by the respondent attorney, or if the recommendation is that the respondent attorney be suspended or disbarred, the record shall be transmitted to the Supreme Court.

If any member or members of the Board shall dissent from the findings, conclusions or recommendation of the majority of the Board, he or they shall state briefly his or their reasons therefor, and a copy shall be served upon the respondent attorney or his counsel. Such dissent or dissents shall be a part of the record.

The member of the Board who shall have served on the Panel shall not participate in the review.

No suspension or disbarment shall be recommended by the Board unless and until a transcript of the testimony before the Panel shall have been reduced to writing, settled as in this rule provided, and circulated to each member of the Board.

RULE IX.

HEARING BEFORE THE SUPREME COURT

Upon the filing of the record with the Supreme Court, the Clerk of the court shall mail written notice of such filing to State Bar Counsel and the respondent attorney or his counsel.

The respondent attorney shall be allowed thirty days after the filing of the record in which to file with the Board three copies and to file with the Supreme Court 25 copies of his objections to the findings, conclusions and recommendation of the Board.

Such objections shall be in the form of a brief containing arguments and citations of authority in support thereof.

The Association shall have thirty days from the day of the service of the objections on the Association in which to serve upon the respondent attorney or his counsel and file with the Supreme Court a corresponding number of answering briefs. The respondent attorney shall have twenty days from the day of service of the answering brief in which to file with the Board and the Supreme Court a like number of reply briefs.

At the termination of the twenty days, the clerk of the Supreme Court shall enter the cause upon the docket of the court for hearing on any day occurring not less than ten days thereafter and shall notify by mail the respondent attorney and State Bar Counsel of the time fixed for such hearing. The cause may be submitted on briefs or with oral argument. Each party shall have one-half hour for argument.

If the respondent attorney fails to file objections within the thirty-day period above provided, the Association shall have 20 days from the expiration of such period in which to mail respondent attorney one copy and file with the clerk of the Supreme Court 15 copies of the Association's brief. Thereupon the clerk shall enter the cause upon the docket for hearing in the manner in these rules above provided.

RULE X.

REINSTATEMENT AFTER DISBARMENT

A. PETITION. A petition for reinstatement as a member of the Association after disbarment therefrom shall be in writing and verified by the petitioner and filed with the Board. The petition shall set forth the age, residence and address of the petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the application and the total fees as required in Rules 3 B 5 and 3 B 6 of the Rules for Admission to Practice.

B. INVESTIGATION. In its discretion the Board may refer the petition for reinstatement for investigation and report to the proper Local Administrative Committee, State Bar Counsel, or to such other person or persons as may be determined by the Board.

C. NOTICE OF HEARING BEFORE BOARD. The Board shall fix a time and place for hearing of the petition and serve notice thereof ten days prior to the hearing upon the petitioner and upon such persons as may be ordered by the Board. Notice of the hearing shall also be published at least once in the Washington State Bar News or such other periodical as the Board may direct. Such published

notice shall contain a statement that a petition for reinstatement has been filed and the time fixed for the hearing of the petition for reinstatement.

D. Statements for or Against Reinstatement. On or prior to the date of hearing, anyone wishing to do so may file with the Board written statements for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Rule X E. Except by its leave no person other than the petitioner shall be heard orally by the Board.

E. Requirements and Procedure. Such petition for reinstatement shall be approved only upon affirmative showing to the satisfaction of the Board that the petitioner possesses the qualifications and meets the requirements as set forth in Rule 3 B of the Rules for Admission to Practice, excepting subsections 7, 8 and 9 thereof, and that his reinstatement will not be detrimental to the integrity and standing of the Bar and the administration of justice, or be contrary to the public interest.

The recommendation of the Board shall be served upon the petitioner, and, together with the record in connection therewith, shall be transmitted to the Supreme Court.

F. Attorneys' Examination. If the petition for reinstatement is granted by the Supreme Court the action shall be subject to the petitioner's taking and passing the attorney applicant's examination as prescribed by Rule 4 of the Rules for Admission to Practice.

If the petition for reinstatement is denied the examination and admission fee shall be refunded to the petitioner.

G. Time of Petition. No petition for reinstatement shall

be filed within a period of one year next after disbarment or within a period of one year next after an adverse decision of the Supreme Court upon a former petition filed by or on behalf of the same person.

Rule XI.

GENERAL PROVISIONS

A. Residence. For the purpose of these rules a member of the Association is a resident of that county and congressional district in which he maintains, or last maintained, his principal office for the practice of law whether that county or congressional district is his place of abode or not.

B. District. When used alone in these rules the term "district" shall refer to those districts only that are created under Rules II A or V A.

C. Association. The word "Association" wherever it appears in these rules refers to the Washington State Bar Association.

D. Board. The word "Board" when used alone in these rules refers to the Board of Governors of the Association.

E. Panel. The word "Panel" when used alone in these rules refers to the Hearing Panel.

F. Papers May be Typewritten or Printed. All pleadings, briefs, documents or notices in these rules provided for may be typewritten, or printed.

G. Filing. Whenever in these rules it is required that any document shall be filed with the Board, such filing shall be made by depositing the document in the office of the Association.

H. Fees and Expenses. The members of Local Administrative Committees, Local Trial Committees and Panels, shall receive no compensation for their services, but their expenses, if any, incurred in connection with their duties, subject to the limitations established by resolution of the Board, shall be paid from the funds of the Association.

I. Deposition Costs. The fees for the attendance of the court reporter and the officer administering the oath and for transcribing the testimony of any deposition requested by a Local Administrative Committee under Rule II H shall be paid by the Association.

J. Guardian Ad Litem and Appointed Counsel. The fees for services rendered and costs expended and incurred by a guardian ad litem or counsel appointed under Rule VII K 1 and 2 shall be paid by the Association.

K. Representation of the Respondent Attorney by a Former Association President or Member of the Board. A former president of the Association or a former member of the Board shall not represent a respondent attorney in proceedings under these rules until after the lapse of two years following expiration of his term of office.

L. Records Are Confidential. Records of a proceeding in a disciplinary matter shall be open for inspection only by the Board, State Bar Counsel, respondent attorney or his counsel unless respondent attorney in writing requests otherwise. A judge of a court of record who has furnished information concerning matters involved in a disciplinary proceeding may, upon his request and in the discretion of the Board, be furnished with a statement of the final action taken by the Board in such proceeding with the reasons therefor.

Disclosure by any person whomsoever of any part of such proceeding made available to him by these Rules, particular reference being hereby made to Rules II F, VIII A, and VIII D, shall subject such person to a proceeding as for contempt.

M. Reference to Rules. Reference herein to a rule or rules is to these rules unless otherwise specified.

APPENDIX D

VIII. REINSTATEMENT AFTER DISBARMENT

RULE 8.1 RESTRICTIONS AGAINST PETITIONING

(a) Time of Petition. No petition for reinstatement shall be filed within a period of one year next after disbarment or within a period of one year after an adverse decision of the Supreme Court upon a former petition filed by or on behalf of the same person.

(b) Costs. No disbarred attorney may file a petition for reinstatement until the amount of the costs and expenses fixed pursuant to these rules has been fully paid.

RULE 8.2 FORM OF PETITION

A petition for reinstatement as a member of the Association after disbarment therefrom shall be in writing and verified by the petitioner and filed with the Board of Governors. The petition shall set forth the age, residence and address of the petitioner, the date of disbarment, and a concise statement of facts claimed to justify reinstatement.

RULE 8.3 FEES

The petition shall be accompanied by the application and the total fees required of an attorney applicant under the Rules for Admission to Practice.

RULE 8.4 INVESTIGATION

In its discretion the Board of Governors may refer the petition for reinstatement for investigation and report to the proper Local Administrative Committee, Disciplinary Board, State Bar Counsel, or to such other person or persons as may be determined by the Board of Governors.

RULE 8.5
HEARING BEFORE THE BOARD OF GOVERNORS

(a) Notice. The Board of Governors shall fix a time and place for hearing of the petition and serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such persons as may be ordered by the Board of Governors. Notice of the hearing shall also be published at least once in the Washington State Bar News or such other periodical as the Board of Governors may direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and the time fixed for the hearing of the petition for reinstatement.

(b) Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Board of Governors written statements for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Rule 8.6. Except by its leave no person other than the petitioner shall be heard orally by the Board.

RULE 8.6 ACTION BY THE BOARD OF GOVERNORS

(a) Requirement for Favorable Recommendations. Reinstatement may be recommended by the Board of Governors only upon affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth in the Rules for Admission to Practice for attorney applicants, and that his reinstatement will not be detrimental to the integrity and standing of the Bar and the administration of justice, or be contrary to the public interest.

(b) Disposition of Recommendation. The recommendation of the Board of Governors shall be served upon the petitioner, and, together with the record in connection therewith, shall be transmitted to the Supreme Court for disposition.

RULE 8.7
ACTION ON SUPREME COURT'S DETERMINATION

(a) Petition Approved. If the petition for reinstatement is granted by the Supreme Court, the action shall be subject to the petitioner's taking and passing the attorney applicant's examination as prescribed by the Rules for Admission to Practice.

(b) Petition Denied. If the petition for reinstatement is denied, the examination and admission fee shall be refunded to the petitioner.

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IN THE

Supreme Court of the United States

October Term, 1972

No. .....

MAX KOSHER,
Petitioner,

v.

WASHINGTON STATE BAR ASSOCIATION,
Respondent.

ANSWER TO PETITION BY WASHINGTON STATE BAR ASSOCIATION

STATEMENT OF ISSUE

The only issue in this case is whether or not a significant issue of constitutional law is presented by the petition. We contend there is none.

STATEMENT OF THE CASE

Commencing at page A-1 of Appendix A of petitioner's brief, the Order of the Supreme Court of the State of Washington dismissing Mr. Kosher's complaint, in which he attempted to have the Order of Disbarment set aside on equitable and constitutional grounds, is set forth in full.

The Washington State Bar Association (hereinafter referred to as the Association) respectfully refers the Court

to that Order for a correct statement of the significant facts involved in this proceeding.

Commencing at page A-9 of Appendix B, petitioner has set forth the Opinion of the Supreme Court of the State of Washington dated May 24, 1962 in which the Court disbarred Mr. Kosher. That Opinion represents the best statement of the grounds upon which Mr. Kosher was disbarred.

A chronology of the events involved in this matter is as follows:

September 10, 1947 — Mr. Kosher admitted to the Bar of the State of Washington.

September 23, 1960 — Power of attorney to his brother executed.

July 31, 1961 — Complaint and disciplinary proceeding served on Celia Kosher, the mother of Max Kosher.

August 1, 1961 — Notice and complaint mailed to Mr. Kosher at his office registered with the Washington State Bar Association.

August 14, 1961 — Supplemental complaint and notice served on Ike Kosher, the father of Max Kosher.

August 31, 1961 — Mr. William Lanning, attorney at law, filed an answer on behalf of Mr. Kosher.

November 8, 1961 — Hearing on the complaint scheduled and notices mailed.

November 29, 1961 — Hearing commenced.

January 5, 1962 — Power of attorney to Mr. Kosher's brother recorded.

May 24, 1962 — Record on disbarment proceeding filed in the Supreme Court of the State of Washington.

January 10, 1963 — Judgment of disbarment entered.

March 26, 1971 — Mr. Kosher filed his complaint to vacate the disbarment proceeding in the Supreme Court of the State of Washington.

The brief of the Washington State Bar Association that was filed with the Supreme Court of the State of Washington is included in the records before this Court as document number 70 pages 229 to 247. At page 3 of that brief (Tr. 234) the applicable rules for service of notice to attorneys involved in disciplinary proceedings is set forth. The rule is reasonable and was fully complied with in Mr. Kosher's disbarment proceeding.

Commencing at page 9 of that brief (Tr. 240) the argument in support of the motion to quash Mr. Kosher's complaint is stated. It would serve no useful purpose to prolong this brief by restating that argument.

SUMMARY

A review of this entire record discloses, in brief summary, that Max Kosher, a member of the Bar of the State of Washington, voluntarily left the United States in late October of 1960 while a criminal proceeding was in trial and to which trial Mr. Kosher had been subpoenaed as a witness. Because his attendance as a witness could not be secured, a contempt citation and bench warrant for his apprehension were issued on November 3, 1960.

Mr. Kosher remained outside the United States until after said citation and bench warrant were dismissed in June of 1966.

After the bench warrant was dismissed, Mr. Kosher returned to the United States and several years after his return filed his complaint with the Supreme Court of the

State of Washington seeking to vacate the disbarment proceeding.

The record in the disbarment proceeding and before the Supreme Court of the United States amply supports the judgment of disbarment.

Mr. Kosher's claim that he was denied counsel is a hollow and deceptive claim. He himself is a lawyer. He fully understood the nature of the disciplinary proceeding. He had every opportunity to have a lawyer there representing him if he wanted representation. Mr. Kosher made a special point of having no direct contact with Mr. Lanning, the attorney who was retained by Mr. Kosher's family to represent Mr. Kosher but who had to advise the hearing panel candidly that he had no contact "directly or indirectly' with Max Kosher.

Mr. Kosher's claim that he knew nothing about the disbarment proceeding is completely unbelievable and incredible. Although Mr. Kosher would have us believe that he had no contact with his family, there was testimony in the proceeding that both his brother, William Kosher, who lived at Mr. Kosher's usual place of abode in Everett, Washington with his parents and Foster James Rochan, a close friend of Mr. Kosher, both testified that they were in communication with him and had an address for him after he had left the country. They further stated that his address had been communicated to the attorney who was left in charge of Mr. Kosher's law office during his absence. See Finding 15 (Page 5) of the Supreme Court's Order of January 11, 1972 dismissing Mr. Kosher's Complaint (Page A-5 Petitioner's Brief).

CONCLUSION

It is respectfully submitted that the judgment of disbarment is amply supported by the evidence which was submitted in accordance with rules and procedures in effect at the time governing disciplinary proceedings in the State of Washington. All of the notice that could have possibly been given was given Mr. Kosher and he ignored it. In order to avoid prosecution he carefully concealed his whereabouts from the Washington State Bar Association. Under these circumstances he has no cause for complaint.

Respectfully submitted,

JACK P. SCHOLFIELD
THOMAS D. FREY
Counsel for Washington State Bar Association